ESTTA Tracking number:

ESTTA733080 03/12/2016

Filing date:

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91221542		
Party	Plaintiff John Zidian Co., Inc., Zidian Import, Inc.		
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Submission	Other Motions/Papers		
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Date	03/12/2016		
Attachments	Motion to Consolidate.pdf(2346260 bytes )		

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

John Zidian Co., Inc.	) MOTION TO CONSOLIDATE OPPOSITION
ŕ	NOS. 91221542 AND 91220734
and Zidian Import, Inc.,	) Opposition Nos.: 91221542 <u>and</u> ) 91220734
Opposers, vs. GIA S.r.l.,	Marks:  and
Applicant.	) Ser. Nos.: 86/432,930 <u>and</u> ) 79/144,096
	) Filed: October 23, 2014 <u>and</u> ) January 23, 2014
	) Published: March 31, 2015 <u>and</u> ) October 28, 2014
Now come Opposers, by and through	n counsel and pursuant to Fed. R. Civ. P. 42(a) and
TBMP §511, and hereby request consolidati	on of opposition nos. 91221542 and 91220734 into a
single proceeding.	
Fed. R. Civ. P. 42(a) states in relevan	nt part:
THE COURT MAY: (1) JOIN FOR HEARIN	OLVE A COMMON QUESTION OF LAW OR FACT, NG OR TRIAL ANY OR ALL MATTERS AT ISSUE IN ACTIONS; OR (3) ISSUE ANY OTHER ORDERS TO Y."
See also TBMP §511("When cases involving	g common questions of law or fact are pending
before the Board, the Board may order the c	onsolidation of cases.") In determining whether to
consolidate proceedings, the Board will "we	eigh the savings in time, effort, and expense, which
may be gained from consolidation, against a	ny prejudice or inconvenience that may be caused

thereby." TBMP §511. Identity of the parties is a factor considered by the Board in determining whether consolidation should be ordered. <u>Id</u>.

The two proceedings which Opposers seek to consolidate are textbook examples of cases that should rightfully be consolidated.

The parties to both proceedings are identical: In both, the Opposers are John Zidian Co., Inc. and Zidian Manufacturing, Inc., and in both, the Applicant is GIA S.r.l.

In both proceedings, Opposers have pleaded the following marks:

MI-	D M.	C I-
<u>Mark</u>	Reg. No. Reg. Date	Goods
	<u>Reg. Bute</u>	
GIA RUSSA	2,813,177	Alimentary pastes, pasta, tomato sauces, vinegar, noodles, and bread crumbs.
	Feb. 10, 2004	
GIA RUSSA	3,212,467	Meatballs, processed artichokes, processed artichoke hearts, processed beans, processed olives, processed
	Feb. 27, 2007	mushrooms, processed peppers, processed onions, processed pepperoncini, giardiniera, processed hearts of palm, processed garlic, olive oil, vegetable oil, corn oil, cheese, broth, soup, fruit and vegetable salads, stuffed vine leaves, canned processed tomatoes, processed eggplant, processed zucchini, bruschetta toppings, and gift baskets containing a mix of the aforementioned goods.  Alimentary paste, pasta, stuffed ravioli, stuffed rigatoni, stuffed pasta shells, cavatelli, tortellini, pasta sauces, tomato sauces, vinegar, noodles, bread crumbs, balsamic glaze, bread, sloppy joe sauce, gnocchi, polenta, spaetzle, and gift baskets containing a mix of the aforementioned
GIA DIIGGA	2.764.000	goods.
GIA RUSSA	3,764,808	Wine.
	March 23, 2010	

<u>Mark</u>	Reg. No. Reg. Date	Goods
GIARUSSA	3,212,469 Feb. 27, 2007  2,306,277  January 4	Meatballs, processed artichokes, processed artichoke hearts, processed beans, processed olives, processed mushrooms, processed peppers, processed onions, processed pepperoncini, giardiniera, processed hearts of palm, processed garlic, olive oil, vegetable oil, corn oil, cheese, broth, soup, fruit and vegetable salads, stuffed vine leaves, canned processed tomatoes, processed eggplant, processed zucchini, bruschetta toppings, and gift baskets containing a mix of the aforementioned goods.  Alimentary paste, pasta, stuffed ravioli, stuffed rigatoni, stuffed pasta shells, cavatelli, tortellini, pasta sauces, tomato sauces, vinegar, noodles, bread crumbs, balsamic glaze, bread, sloppy joe sauce, gnocchi, polenta, spaetzle, and gift baskets containing a mix of the aforementioned goods.  Alimentary pastes
-(GIA RUSA)	January 4, 2000	
GIA	4,422,203 October 22, 2013	Wines

<u>See M.C.I. Foods Inc. v. Bunte</u>, 86 USPQ2d 1044 (TTAB 2008)(consolidating proceedings involving identical parties, identical registrations and related issues).

Moreover, the marks being opposed in the two proceedings are virtually identical. They



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(proceeding no. 91221542) and



(proceeding no. 91220734).

Both applications list various food products in their descriptions of goods. <u>S. Industries Inc. v.</u>

Lamb-Weston Inc., 45 USPQ2d 1293, 1297 (TTAB 1997)(proceedings involving the same mark

and virtually identical pleadings consolidated). The differences between the opposed marks, and the goods associated therewith, are negligible. <u>Ritchie v. Simpson</u>, 41 USPQ2d1859, 1860 (TTAB 1996)(cases consolidated despite variations in marks and goods) <u>rev'd on other grounds</u>, 170 F.3d 1092, 50 USPQ2d 1023 (Fed. Cir. 1999);

On February 24, 2016, Applicant served initial disclosures upon Opposers which are virtually <u>identical</u>. This means that the witnesses called at trial will be identical in the two proceedings, and that many of the same documents will be introduced in both proceedings.

Clearly, the bulk of the work to be done in these two proceedings will be duplicative. Aside from the fact that a counterclaim was asserted in proceeding no. 91221542, the issues in the cases are absolutely identical. Consolidation of the proceedings will result in a substantial savings in time, effort, and expense. Absolutely no prejudice or inconvenience will result.

WHEREFORE, Opposers, for good cause shown, request that the Board issue an Order consolidating proceeding 91221542 and 91220734.

Dated: March 12, 2016

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## **CERTIFICATE OF SERVICE**

I certify that a true and accurate copy of the foregoing MOTION TO CONSOLIDATE

OPPOSITION NOS. 91221542 AND 91220734 was served by first class U.S. mail, postage

prepaid, on this <u>l</u> day of March, 2016, upon Applicant at the following address:

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